

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

BEARBOX LLC and AUSTIN STORMS,

Plaintiffs,

V.

LANCIUM LLC, MICHAEL T.
MCNAMARA, and RAYMOND E. CLINE,
JR.

Defendants.

C.A. No. 21-534-MN-CJB

PUBLIC VERSION

**DEFENDANTS' CONCISE STATEMENT OF UNDISPUTED MATERIAL FACTS IN
SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

Defendants Lancium LLC, Michael T. McNamara, and Raymond E. Cline, Jr. respectfully submit the following Statement of Undisputed Material Facts in support of their motion for summary judgment.

I. DEFENDANTS' '433 PATENT

1. U.S. Provisional Patent Application No. 62/927,119 was filed on October 28, 2019 and identifies Michael T. McNamara and Raymond E. Cline, Jr. as its inventors. *See* Ex. 17.¹

2. U.S. Patent Application No. 16/702,931 was filed on December 4, 2019 and identifies Michael T. McNamara and Raymond E. Cline, Jr. as its inventors. *See* Ex. 17.

3. Michael T. McNamara and Raymond E. Cline, Jr. are the named inventors of U.S. Patent No. 10,608,433, titled “Methods And Systems for Adjusting Power Consumption Based On A Fixed-Duration Power Option Agreement,” which issued from U.S. Patent Application No. 16/702,931 and claims priority to U.S. Provisional Patent Application No. 62/927,119. Ex. 17.

4. U.S. Patent No. 10,608,433 is assigned to Lancium LLC. Ex. 17.

5. U.S. Patent Application No. 16/702,931 issued as U.S. Patent No. 10,608,433 without any rejections being issued by the U.S. Patent and Trademark Office patent examiner assigned to this application. Ex. 15 at BB00000555-68.

II. DEFENDANTS' '632 APPLICATION

6. U.S. Provisional Patent Application No. 62/616,348 was filed on January 11, 2018 and identifies David Henson, Michael McNamara, and Raymond Cline as its inventors. Michael T. McNamara and Raymond E. Cline, Jr. as its inventors. *See* Ex. 13.

7. International Patent Application No. PCT/US2018/017950 was filed on February 13, 2018, identifies David Henson, Michael McNamara, and Raymond Cline as its inventors, and published as International Publication No. WO 2019/139632 A1 on July 31, 2019. *See* Ex. 12; Ex. 13.

¹ All references to “Ex. ___” are to the exhibits attached to the Declaration of Adam M. Kaufmann submitted herewith.

8. U.S. Patent No. 11,016,456 is titled “Method and System for Dynamic Power Delivery To a Flexible Datacenter Using Unutilized Energy Sources,” issued from International Patent Application No. PCT/US2018/017950, claims priority to U.S. Provisional Patent Application No. 62/616,348, and names David Henson, Michael McNamara, and Raymond Cline as its inventors. *See* Ex. 13

9. U.S. Patent No. 11,016,456 is assigned to Lancium LLC. *See* Ex. 13

III. AUSTIN STORMS’ AND MICHAEL MCNAMARA’S COMMUNICATIONS

10. Austin Storms and Michael McNamara met and communicated for the first time on May 3, 2019. D.I. 103 at ¶¶ 32-33; D.I. 28 at ¶ 38; D.I. 41 at ¶ 38.

11. On May 3, 2019, after the Fidelity FCAT Mining Summit, Austin Storms and Michael McNamara attended a dinner in a group of approximately eight people that included competitors in the Bitcoin mining field. The conversations between Storms and McNamara at this dinner occurred in front of the other attendees. D.I. 28 at ¶¶ 40, 41, 43; D.I. 41 at ¶¶ 40, 41, 43.

12. Following their conversation at the May 3, 2019 dinner, Austin Storms and Michael McNamara exchanged a series of text messages between May 3, 2019 and May 9, 2019. D.I. 28 at ¶¶ 46-47, Ex. C; D.I. 41 at ¶¶ 46-47.

13. On May 9, 2019, Austin Storms sent Michael McNamara an email with five attached documents. D.I. 28 at ¶¶ 48-49, Ex. D; D.I. 41 at ¶¶ 48-49. This email was the last communication between Austin Storms and Michael McNamara, and Mr. Storms did not hear from Mr. McNamara again. D.I. 103 at ¶ 36.

14. The conversations that Austin Storms and Michael McNamara had May 3, 2019, the text messages exchanged between Mr. Storms and Mr. McNamara from May 3, 2019 and May 9, 2019, and the email Mr. Storms sent to Mr. McNamara on May 9, 2019 were the only

communications Mr. Storms had with Mr. McNamara. D.I. 28 at ¶ 38; D.I. 41 at ¶ 38; D.I. 103 at ¶¶ 35-36.

15. Austin Storms has never had any oral communications with Raymond Cline. Ex. 23 at 10-11.

16. The May 9, 2019 email that Austin Storms sent Michael McNamara includes a “Confidentiality Notice” that states “This email communication may contain private, confidential, or legally privileged information intended for the sole use of the designated and/or duly authorized recipient(s).” D.I. 28 at ¶¶ 48-49, Ex. D; D.I. 41 at ¶¶ 48-49. None of the attachments to this email include any confidentiality marking or designation. D.I. 28 at ¶¶ 48-49, Ex. D; D.I. 41 at ¶¶ 48-49.

17. The documents produced by Plaintiffs with Bates numbers BB00000090-BB00000097, are the May 9, 2019 email and its attachments that Austin Storms sent to Michael McNamara. Ex. 10

18. Plaintiffs Austin Storms and BearBox LLC do not assert that the May 9, 2019 email (BB00000090) or its attachments marked as BB00000091-BB00000096 are confidential. Ex. 7 at 217:13-23.

19. The drawing titled “BearBox Automatic Miner Management System Version 1.0” in the document marked as BB00000092 was posted on the BearBox Twitter account on June 24, 2019. Ex. 10 at BB00000092; Ex. 11 at BB00000718.

20. The BearBox Twitter account was publicly viewable on June 24, 2019. Ex. 7 at 247:8-248:21.

IV. BEARBOX

21. BearBox only built one BearBox container, which it sold for no profit. Ex. 7 at 45:18-23; 48:6-7.

22. Plaintiffs Austin Storms and BearBox LLC became aware of U.S. Patent No. 10,608,433 and the lawsuit captioned *Lancium LLC v. Layer1 Technologies, Inc.*, Case No. 6:20-cv-739 (W.D. Texas) on or about August 17, 2020. D.I. 103 at ¶¶ 52, 54.

23. Plaintiffs Austin Storms and BearBox LLC filed the original Complaint in this lawsuit on April 14, 2021. D.I. 1.

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